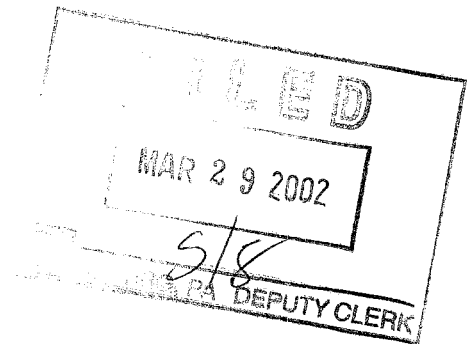


ORIGINAL



IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DESMOND V. GAYLE,
Plaintiff

v.

WARDEN HOGAN AND DEPUTY BOWEN,
Defendants

: 3:CV-01-1282
: (Judge Caldwell)
:
:
:
:
:
:

EXHIBITS TO
DEFENDANTS' BRIEF IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

Donald L. Reihart, Esq.
Sup. Ct. I.D. #07421
2600 Eastern Boulevard
Suite 204
York, PA 17402-2904
Telephone (717) 755-2799
Assistant Solicitor for York County

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DESMOND V. GAYLE,
Plaintiff

3:CV-01-1282
(Judge Caldwell)

V.

WARDEN HOGAN AND DEPUTY BOWEN,
Defendants

AFFIDAVIT OF DONALD L. REIHART, ESQUIRE

Donald L. Reihart, being duly sworn, deposes and says:

My name is Donald L. Reihart. I am the Assistant County Solicitor for York County. Since 1992, and up to the present time, I have served as Assistant Solicitor for York County. This affidavit is based upon my personal knowledge and information. I am competent to testify and would state as follows, if called as a witness at trial:

1.

I am the Assistant Solicitor for York County and was serving in that capacity during the entire time that Desmond V. Gayle was an inmate at the York County Prison and at all times relevant to the complaint filed by Plaintiff in the above-captioned matter.

2.

At all times relevant to Plaintiff's grievances as set forth in the complaint filed in the above-captioned case, York County Prison had a grievance system in effect. A copy of the Grievance System is appended hereto and marked Exhibit "1."

3.

The administrative system in place at the York County Prison provides for administrative remedies that include monetary damages. On October 18, 2001, the York County Prison Board recommended payment of \$50,000 to an inmate who had been the victim of unlawful force when removed from his cell. The corrections officers were terminated and prosecuted criminally. This incident is an example of the remedies provided by the administrative system in place at the York County Prison.

4.

I am custodian of all of the Appeals (806 Solicitor Reviews) of the grievances filed by the inmates at the York County Prison.

5.

I am also custodian of any appeals taken by the inmates to the York County Prison Board.

6.

Inmate Desmond V. Gayle filed no grievances about his objection to eating food loaf, being made sick by food loaf, or being placed in the Behavioral Adjustment Unit.

7.

Inmate Desmond V. Gayle did not exhaust the administrative remedies available to him for his complaints about his conditions of confinement as outlined in the facts set forth in the complaint filed in the above-captioned matter.

8.

The written rules and regulations concerning the administrative procedures provide the following:


"An inmate who is not satisfied with the solicitor's review of his case or the decision of the Complaint Review Board shall have the final right to review by the York County Prison Board. The appeal must be filed within thirty (30) days of the receipt of the notice of the decision appealed. Such appeal may be in letter form, shall explain the reasons for the appeal, be addressed and mailed to President, Prison Board of York County Commissioners, One West Marketway, 4th Floor, York, Pennsylvania 17402. The grievance system shall not be exhausted 'within the meaning of the State and Federal law unless all reviews and appeals are timely taken and denied.'" (See Exhibit "1")

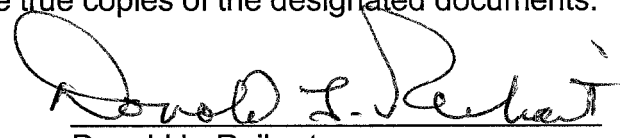
9.

The same information set forth above is in the Inmate Handbook which was given to Inmate Desmond V. Gayle at the time of his admission and was available to him during his entire tenure as an inmate at the York County Prison. (See Exhibit "2")

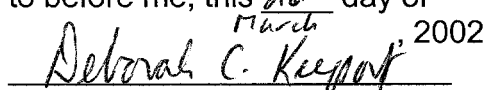
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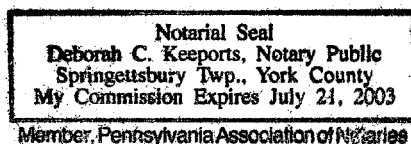
I certify that the attached Exhibits are true copies of the designated documents.


Witness


Donald L. Reihart
Assistant County Solicitor

Sworn or affirmed to and subscribed
to before me, this 26th day of

March, 2002

Notary Public



IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

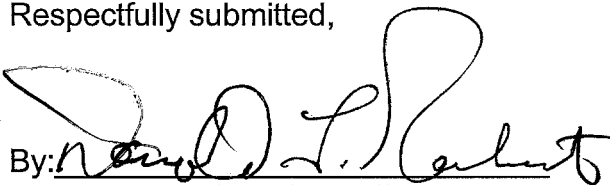
DESMOND V. GAYLE,	Plaintiff	:	3:CV-01-1282
		:	
	v.	:	(Judge Caldwell)
		:	
WARDEN HOGAN AND DEPUTY BOWEN,		:	
Defendants		:	

CERTIFICATE OF SERVICE

I, Donald L. Reihart, Esquire, Assistant Solicitor for York County, hereby certify that a true and correct copy of the foregoing Affidavit of Donald L. Reihart, Esquire, was caused to be served on the date shown below by depositing same in the United States mail, first-class, postage prepaid thereon, addressed as follows:

Desmond V. Gayle, Inmate No. 62154
York County Prison
3400 Concord Road
York, PA 17402

Respectfully submitted,

By: 

Donald L. Reihart, Esq.
Sup. Ct. I.D. #07421
2600 Eastern Boulevard, Suite 204
York, PA 17402-2904
Telephone (717) 755-2799

Date: 3/25/02

Assistant Solicitor for York County

AMENDMENT TO PROCEDURES MANUAL
FOR THE YORK COUNTY PRISON

WHEREAS, the York County Prison Board has full authority by virtue of the Act of January 25, 1996, P.L. (1965) 1577 § 2; 61 P.S. § 409, as amended, to make rules and regulations for the government and management of the Prison, to make rules and regulations for the government and management of the Prison, and the safekeeping, discipline and employment of the prisoners as may be deemed necessary; and

WHEREAS, the York County Prison Board has determined to adopt Prisoner Grievance Procedures as a full administrative remedy to assure full, fair and just evaluation and relief for prisoner grievances;

NOW, THEREFORE, the following Grievance Procedures and Inmate Complaint Review System is established for the York County Prison:

YORK COUNTY PRISON GRIEVANCE PROCEDURES

3-ALDF-3E-11 INMATE COMPLAINT REVIEW SYSTEM (CRS) OR "801"

PURPOSE:

The Complaint Review System (CRS) is intended as a formal and objective review of the complaints by residents at the York County Prison in order to remedy specific situations (where necessary) and to help identify procedural problem areas at this institution. Complaints will be submitted on an "801" form and known as a "Complaint" or "801".

EXHIBIT "1"

STRUCTURE:

All resident complaints are to be directed (in writing) to the designated "Complaint Supervisor". The Complaint Supervisor is responsible to, and reports directly to, the Deputy Warden for Treatment of York County Prison.

Appeals arising in the CRS shall be reviewed by the Deputy Warden of the York County Prison. If Complainant is dissatisfied with the initial appeal determination, a screening review may be requested. A County Solicitor designated by the County Prison Board shall perform the screening review, following established guidelines, and may recommend a review of the case by the Complaint Review Board.

GENERAL PROVISIONS:

- A. The Deputy Warden or the Appeals Board outlined in the above section may at any time:
 - 1. Dismiss or order held in abeyance any complaint involving subject matter which he deems appropriate for consideration only by a court or other established and available form.
- B. No resident shall be disciplined for filing a complaint or otherwise pursuing a remedy in this complaint system, but no immunity is afforded herein to any person from civil or criminal liability for any of his acts or statements.
- C. The CRS will not deal with Complaints (801s) in the following areas:
 - 1. Complaints which seek to challenge or have reviewed the proceedings of a disciplinary hearing or parole hearing.
 - 2. Attempt to obtain institutional privileges without first having applied for the privilege through the use of normal institutional procedure. (Request Form)
 - 3. Complaints about other inmates, unless it deals with an injury or threat of injury.
- D. The procedure described herein shall be followed as closely as possible. However, it is recognized that in particular cases, some reasonable modification of the procedure will be necessary and proper. Priority will be given to emergency cases, where deemed appropriate.

INSTRUCTIONAL LEVEL:

- A. No complaints will be entertained from a group, or representatives of a group. All complaints are to be on an individual basis only.
- B. All Complaints shall be made in writing (legible) on the Complaint form provided for this purpose, which shall be made readily available from Officers or Counselors to all inmates. The signed Complaint form shall be deposited in a slip box, or at the Central Control Desk, and shall be picked up each morning by the Complaint Supervisor at 9:00 A.M. (excluding Saturdays, Sundays, and holidays). Female complaints shall be delivered to the Complaint Supervisor by the Officer at the time the complaint form is received, if during weekdays 8 A.M. to 4 P.m.; others deposited for handling at the next regular business hours.
- C. The Warden of the York County Prison will designate a member of his staff to act as Complaint Supervisor. The Complaint Supervisor is the personal representative of the Warden in complaint matters, and the Warden will take measures to insure the Complaint Supervisor receives full cooperation from the institutional staff.
- D. The Complaint Supervisor: (See – "Complaint Supervisor, Definition of Position" in this section).
- E. RECORD KEEPING AND PROCEDURAL GUIDELINE FLOW CHART FOR PRISONER COMPLAINTS

- 1. All complaints received are to be written on the designated form. The complaint should be printed or written clearly – an illegible complaint will be returned to the sender with a notation to re-submit. An illegible complaint will not receive a registration number in the CRS. Complaints should be directed to the Complaint Supervisor. All complaints (except those that are illegible) are to be registered. Those complaints not within the realm of the system will be reported to the Complainant as such.
- 2. Complaints are to be sent daily, at 9 A.M., Monday through Friday, to the Complaint Supervisor through the Central Control Desk. The complaints from female inmates are to be delivered to the Complaint Supervisor's Office by the Matron upon receipt of the complaint, or as soon as possible thereafter.
- 3. Upon receipt of a complaint, the Complaint Supervisor will assign a registry number and enter that number, the date received, the name of the Complainant, and the other information requested in the Complaint Register. Once a registry number is assigned, it becomes

THE method of identification of the complaint throughout the system, and should be included on every form relating to the complaint.

4. The Complaint Supervisor shall proceed to investigate the complaint (interviews, etc.) and shall provide a form to all staff members or other individuals working in the institution mentioned in the complaint, in order that they may report their involvement with the Complainant. The staff member is to respond to the Complaint Supervisor within forty-eight (48) hours of receipt of the form.
 5. After review by the Complaint Supervisor of all factors that he deems relevant to the complaint, the Complaint Supervisor shall file a written report containing a written summary of the facts as they appear to him, what steps or measures he has taken, the results he has achieved, the conclusions he has formed, and his recommendations. This written summary and recommendations shall be delivered to the Deputy Warden for Treatment, with copies to the Complainant and all staff members mentioned in the complaint, no later than ten (10) working days after receipt of the complaint.
 6. If there is an objection by any party to the recommendation of the Complaint Supervisor, that party may file an appeal within five (5) days of the issuance of the report. If there is no appeal by the party involved, the recommendation is implemented, and, where appropriate, an administrative directive issued on the subject. The Deputy Warden is to reply to all concerned parties and the Complaint Supervisor within twenty-one (21) days of the Appeal Notice.
 7. If any party disagrees with the decision of the Deputy Warden, an appeal to the Solicitor for relief or determination by the Complaint Review Board shall include a statement that the appeal is not being made without valid grounds, and the reasons for granting the appeal and relief requested shall be set forth in writing.
 8. Upon final disposition of a complaint, the packet of forms consisting of: original Complaint, Acknowledgement, staff reports, the report of the Complaint Supervisor, and a copy of the appeal proceedings are to be filed numerically by registry number.
- F. Requests for Administrative Staff Interview: All requests for an interview with an Administrative Staff member must be on the "Request Form" provided, and must include some indication of the reason for the request. Do not use an "801" as a "Request".

APPEALS:

A. Review by the Deputy Warden

1. A request for review must be made in writing on the form provided to the Deputy Warden.
2. The request for appeal shall be delivered to the Complaint Supervisor in the same manner as complaints at which time the request will be recorded and the Deputy Warden will be notified by the Complaint Supervisor.
3. Within twenty-one (21) days of the receipt of a request for appeal, the Deputy Warden shall affirm, modify or reverse the decision of the Complaint Supervisor, or hold in abeyance those matters being litigated in court.
4. The Deputy Warden will provide copies of its decision to the resident Complainant, the Complaint Supervisor, and staff members or departments involved in the Complaint, if requested.

B. Review by County Solicitor¹

1. A request for review of the Deputy Warden's decision must be in writing and shall be forwarded to the County Solicitor within three days.

Revised

2. The County Solicitor shall determine whether the request is meritorious within thirty (30) days of receipt of the request for review, or, if additional research or investigation is necessary as soon thereafter as is possible. If investigation or research must be done to make a determination concerning the merit of the appeal, the inmate shall be notified of the need for investigation, and that a written response will be forwarded when the investigation is completed. The solicitor shall provide written notice to the Complainant, the Warden and Deputy Warden, and any other person directed by the Prison Board, of the final decision, following these standards:

- (a) Decisions of the Deputy Warden on "de minimis" matters not involving alleged violations of constitutional rights shall be affirmed unless the decision is contrary to a policy, standard, or directive of the County Prison Board. If any unusual or potentially harmful matter is raised in such appeal, suggesting

¹ Shall include any duly appointed Assistant County Solicitor.

that any part of the Prison operation presents a risk of harm to any person, it shall be reported to the Prison Board.

- (b) Decisions involving constitutional rights and 42 U.S.C. § 1983 violations, whether alleged or not, may be recommended to the Prison Board for assignment to the Complaint Review Board if the Solicitor finds some evidence to warrant a belief that such a violation has occurred. If the Prison Board concurs in the recommendation, the case shall be heard by the Complaint Review Board.
- (c) Documented, serious bodily injury to any person, not self-inflicted, caused by any means, shall automatically be forwarded by the Solicitor (notice to the Prison Board shall be given promptly) for investigation and finding of responsibility by the Complaint Review Board.
- (d) Reported death of any prisoner or any life-threatening injury, whether the subject of a grievance or not, shall be forwarded to the Complaint Review Board, with notice to the Prison Board. The Prison Board may request the District Attorney to assign a County detective to investigate the matter, or some other police agency may be requested, alone, or in conjunction with the District Attorney's Office, to investigate the matter. In general, the Prison Board may, at any time, upon request of the Solicitor or the Complaint Review Board, request assistance from the District Attorney's Office in investigating any matter brought before the Board.
- (e) Grievances dealing with use of unreasonable force, threat of unreasonable force, or commission of any crime, shall be forwarded to the Solicitor for review and reporting to the Prison Board, regardless of the disposition.
- (f) Grievances dealing with racial slurs or actual or threatened discrimination shall be forwarded to the Solicitor for review and reporting to the Prison Board, regardless of the disposition.
- (g) Any grievance or category of grievance, upon request of the Solicitor, shall be forwarded to the Solicitor for review and reporting to the Prison Board, regardless of the disposition.

(New)

C. Adjustment and Settlement

1. This Solicitor, with the agreement of the Warden or his designee, and the President of the Prison Board, may settle or adjust any valid grievance upon such terms that provides justice and equity to the inmate, and facilitates good order and discipline within the prison. All such settlements shall be reported to the Prison Board. Any monetary settlement in excess of \$250.00 shall have prior approval of the County Commissioners and be noted and approved according to law.

COMPLAINT REVIEW BOARD:

A. Composition

The Complaint Review Board shall be composed of a member of the Prison Board, the Warden or his designated replacement, and a civilian representative approved by the Prison Board, who shall serve for a four-year term. Such a representative may serve successive terms.

B. Legal Support

The County Solicitor shall provide legal support to the Complaint Review Board and shall act as an impartial legal advisor to the Board. The Solicitor shall perform direct examination of witnesses, present such evidence as deemed appropriate, and assist the Complaint Review Board in making findings and recommendations.

C. Practice and Procedure

1. Rules of Evidence

Strict rules of evidence shall not apply. Any item or matter which is relevant and material to the matter under consideration may be considered by the Complaint Review Board.

2. Discovery

The Complaint Review Board's purpose is to obtain as much information concerning the subject matter as possible, and may determine to allow a prisoner or his lawyer to have access to the matters investigated, if such access is approved

by the Solicitor, and does not violate any privilege or jeopardize or inhibit any criminal investigation.

3. Right of Counsel

Any Complainant shall have the right to be present before the Complaint Review Board in person, or, at Complainant's expense, by counsel.

4. Record

A verbatim record shall be made of all proceedings.

5. Summary Hearing Procedures

Summary trial procedures shall be followed in making presentations to the Complaint Review Board. Summaries of witnesses' testimony shall be provided either by the County Solicitor or the Complainant or his attorney. Summary Procedures require the use of statements or other evidence to substantiate the summary provided to the Board. The Complainant shall be allowed to make a sworn or unsworn statement. Witnesses shall not be called unless specifically directed by the Complaint Review Board.

D. Jurisdiction

The Complaint Review Board shall have the jurisdiction outlined in these Rules and may make recommendations to the York County Prison Board to rectify any damage or injury determined to be the potential responsibility of the County of York or any of its officials or employees. This section does not waive any governmental immunities of any kind, provided by statute or case law, both Federal and State, and any portion of these Procedures which would in any way limit the immunities provided by law shall, to such extent, be void and unenforceable.

Recommendations shall be based upon the evidence and shall endeavor to provide a just resolution of all grievances or matters investigated, and may include, but shall not be limited to:

1. Monetary damages in a fixed amount;
2. Alternative dispute resolution;
3. Changes in procedure;

4. Disciplinary action;
5. Any equitable or legal relief deemed appropriate.

E. Hearings shall be open

The Complaint Review Board shall open all hearings to the public, except that for cause shown, any portion of the hearing or matters that could impair security at the Prison or which involves and could impair or jeopardize a pending criminal investigation may be closed from public view, upon the request of any member of the Board, the Complainant, District Attorney, Attorney General, or other interested persons.

F. Recommendation of the Complaint Review Board

1. The recommendations of the Complaint Review Board shall be made to the York County Prison Board. The Prison Board may accept the findings and recommendations, modify them according to any new evidence or information not brought before the Complaint Review Board, or to examine the matter independently on the basis of the written record, additional information, and arguments of counsel, and thereafter make such findings and recommendations to the County Commissioners, as may be appropriate.
2. The County's risk management and insurance program shall be integrated whenever possible with this grievance procedure.

G. Inmate's Final Review

1. An inmate who is not satisfied with the Solicitor's Review of his case or the decision of the Complaint Review Board shall have the final right to review by the York County Prison Board. The appeal must be filed within thirty (30) days of the receipt of notice of the decision appealed. Such appeal may be in letter form, shall explain the reasons for the appeal, be addressed and mailed to President, Prison Board of York County Commissioners, 1 West Marketway, Fourth Floor, York, Pennsylvania 17401.
2. The grievance system shall not be "exhausted" within the meaning of the State and Federal law unless all reviews and appeals are timely taken and denied.

Revised

H. Discipline for filing Fraudulent Grievances

The integrity and credibility of the grievance system requires every grievance to be evaluated, investigated, and fairly decided. Grievances filed only for fraudulent purposes deprive other legitimate complaints from timely determination. The following procedure is designed to deter inmates from filing fraudulent grievances without "chilling" the right to file valid grievances even on matters that appear trifling, frivolous or unreasonable:

Any inmate who files a grievance that is found to be "fraudulent" after hearing by the disciplinary review officer appointed to determine guilt or innocence of disciplinary infractions may be disciplined as follows:

1. Loss of all prison privileges.
2. Loss of good time accrued.
3. Confinement in the BAU up to 60 days.
4. Such other discipline that may be lawfully imposed subject to the following:
 - (a) "Fraudulent" means any grievance based upon allegations that are demonstrated beyond a reasonable doubt to be willfully dishonest and the product of a desire to abuse the grievance system or embarrass and humiliate an employee of the County or any other person or for any improper reason other than adjust a perceived legitimate complaint.
 - (b) Any discipline imposed shall be determined by the nature of the abuse intended by the inmate, the inconvenience caused, the expense of investigation, the need to deter such conduct, any prior grievances filed by the inmate found to be fraudulent and shall be proportionate to the actual harm caused while balancing the need to permit the filing of valid grievances by other inmates without fear of reprisals.
 - (c) The inmate shall have the right to appeal as provided in the disciplinary process in place in the prison.

In addition to the above appellate rights, the inmate shall have a right of appeal of any discipline imposed under this Section to the York County Prison Board. Such appeal shall be taken with Thirty (30) days of the imposition of discipline or Ten (10) days after denial of all internal appeals, whichever is later. Such appeals shall be addressed to Solicitor for the York County Prison Board, One West Marketway, Fourth Floor, York,

Pennsylvania 17401. Such appeal will be evaluated by the Solicitor and then presented to the Prison Board for determination at the next regular session of the Prison Board, following receipt of the appeal. If received less than Five (5) days before the scheduled meeting, such appeal will be presented at the following meeting.

The Prison Board shall have full authority to deny, modify the discipline or grant the appeal by recommending that the matter be heard by the Complaint Review Board, who shall hear the matter and made recommendations following the same procedures in place for considering grievance appeals. If the Complaint Review Board shall deny the appeal, the inmate shall have one final appeal to the York County Prison board, as in the case of a grievance.

4-30-01

**INMATE HANDBOOK
FOR
YORK COUNTY PRISON
3400 CONCORD ROAD
YORK, PA 17402-9580**

The function of this institution is to detain prisoners who are awaiting trial and to keep inmates who are legally sentenced by a magistrate or the Court. This institution also detains individuals for the INS. In carrying out this function, every effort will be made to apply the principles of modern corrections. All inmates, irrespective of race, religion, or national origin, will be treated equally. All procedures within the institution will be consistent with the policies established by the York County Prison Board and the laws of the Commonwealth of Pennsylvania.

The primary purpose of this institution is to provide security for those who must be detained for the protection of society. Individuals are confined to this institution as punishment, not for punishment. Each person is treated as an individual. Our aim is to help the individual so he can return to the community as a law abiding citizen.

Read this handbook carefully. Know and comply with the rules and regulations. You are not serving your sentence properly unless you obey the rules of the prison willingly.

THOMAS H. HOGAN
WARDEN

EXHIBIT "2"

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IMMIGRATION BUILDING COMPLEX

Dormitory Housing: In the event of a fire in either **Bravo Dorm** or **Charlie Dorm** follow the officers' instructions. You will be instructed to go down the stairs or directly to the main corridor where you will be directed into the opposite dormitory area or up the main corridor to safety in the gymnasium. If the general doors are not available you may be led to the emergency doors and into the yard area.

Custody Housing: In the event of a fire in **Delta Block** or **Echo Block** follow the officers' instructions. If it is necessary to evacuate the block, the inmates will be placed in the opposite block through either of the main access doors. If the opposite cell block can not be used, you will be moved to the gymnasium or the adjacent court yards or grass yards depending on the circumstances. Above all, **REMAIN CALM, QUIET, AND ORDERLY** so that your Block Officer may move you to a secure location.

GRIEVANCES/COMPLAINTS

The primary method of handling grievances within York County Prison is the Complaint Review System. The form that is used to express your Grievances/Complaints is called an 801. These forms are readily available from your Block or Dorm Officer or your Counselor. Before writing a complaint, please take every possible action to resolve the matter. First, bring the matter to the attention of your Block Officer. Very often, the Block Officer will be able to resolve your problem. If not, talk to the Shift Supervisor. If the problem is still not resolved, the primary method of handling grievances within York County Prison is the Complaint Review System. These forms are readily available from your Block Officers or Counselor. The 801 is used only as a last resort. Clearly state your complaint on the 801 and state the relief you are seeking.

When finished, the 801 can be given to any employee who will be responsible for ensuring that it will be given to the Deputy Warden of Treatment. The inmate may submit the 801 via a block officer, a supervisor, a counselor, a family member or the mail. Inmates may be disciplined for fraudulently filing grievances.

The integrity and credibility of the grievance system requires every grievance to be evaluated, investigated and fairly decided. Grievances filed only for fraudulent purposes deprive other legitimate complaints from timely determination. Any inmate who files a grievance that is found to be "fraudulent," after hearing by the disciplinary review officer pointed to determine guilt or innocence of disciplinary infractions, may be disciplined as follows:

1. Loss of all prison privileges.

2. Loss of good time accrued.
3. Confinement in the BAU up to 60 days.

Fraudulent means any grievance based upon allegations that are demonstrated beyond a reasonable doubt to be willfully dishonest and the product of a desire to abuse the grievance system or embarrass or humiliate an employee of the county or any other person or for any improper reason other than adjust a perceived legitimate complaint.

The Complaint Supervisor will receive the 801's each morning (excluding weekends and holidays). The inmate will normally receive a response within 10 working days. If the 801 requires investigation it may take longer.

If the inmate wishes to appeal the decision of the Complaint Supervisor, he may fill out an 804 appeal. These may be obtained by requesting the form from Complaint Supervisor. The Complaint Supervisor will write out the inmate's name and Complaint Register # on the form. Note: Any attempt to alter either the inmate's name or Complaint Register # automatically voids the appeal. The inmate must return the original and the pink copy to the Complaint Supervisor. All appeals to the Deputy Warden must be submitted within five (5) days of receipt of the response from the Complaint Supervisor. They will be turned into the Control Center and will be picked up every weekday morning.

The inmate will normally receive a response from one or both of the Deputy Wardens (805) within 10 working days from the receipt of the appeal, but it may be longer if an investigation is required.

If the inmate wishes to appeal the decision of the Deputy Warden, he may fill out an (806) "Request for Solicitor Review". The form can be obtained from the Deputy Warden and must be completed within three (3) days of receipt. Any attempt to alter either the inmate's name, complaint registration #, or the date of notice will automatically void the Request for Solicitor Review. The inmate must return the original and the pink copy. The forms are to be turned into the Control Center and the Deputy Warden will send the entire packet to the Solicitor for his review.

The Solicitor will review the 806 and prepare a response to the inmate. If the inmate is not satisfied he may appeal directly to the Prison Board by writing a letter which explains the reason for the appeal to the Chairman, Inspectors of York County Prison, 1 West Marketway, Fourth Floor, York, Pennsylvania 17401.

The Solicitor may refer the matter to the Complaint Review Board. Recommendations of the Complaint Review Board will be made to the York County Prison Board. If you are not satisfied with the decision of the Complaint

Review Board you may appeal directly to the York County Prison Board. Such appeal shall be in letter form, shall explain the reasons for the appeal, be addressed and mailed to Chairman, Inspectors of York County Prison, 1 West Marketway, Fourth Floor, York, Pennsylvania 17401.

The grievance system shall not be considered exhausted unless all reviews and appeals have been taken timely and denied.

HAIRCUTS

Each inmate may get a haircut the first week of every month (Mon. through Sat.). **SEE YOUR BLOCK OFFICER TO ARRANGE THE HAIRCUT.** All haircuts are given by inmate volunteer barbers and are **FREE OF CHARGE.** It is not permitted to give the barber any gifts or payment for haircuts.

INMATE ACCOUNTS

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The Inmate Advisory Council consists of one (1) inmate, chosen by your counselor, from each pod, dorm, or other housing areas consisting of eight (8) or more inmates. Those representatives will meet when necessary with members of the Treatment Staff to disseminate new information including changes in policies or procedures, and to address problems. The Warden will have final approval on

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DESMOND V. GAYLE,
Plaintiff

v.

WARDEN HOGAN AND DEPUTY BOWEN,
Defendants

: 3:CV-01-1282
: (Judge Caldwell)
:
:
:
:
:
:

AFFIDAVIT OF DEPUTY WARDEN ROGER THOMAS

Deputy Warden Roger Thomas, being duly sworn, deposes and says:

My name is Roger Thomas. I am a Deputy Warden at the York County Prison. In December of 1999, and up to the present time, I have served as Deputy Warden for the York County Prison. This affidavit is based upon my personal knowledge and information. I am competent to testify and would state as follows, if called as a witness at trial:

1.

I am a Deputy Warden at the York County Prison and was serving in that capacity during the entire time inmate Desmond V. Gayle was confined in the York County Prison. I continued to be Deputy Warden through the present time.

2.

On or before March 12, 2001, and up to the present time, the York County Prison had a comprehensive grievance system in effect that permitted inmates to complain about and receive relief for their legitimate complaints.

3.

I am custodian of all of the grievances filed by inmates at the York County Prison.

4.

Records indicate that on March 12, 2001, Desmond V. Gayle, was in the new South Block D-Pod Dayroom. He became involved in an altercation with another inmate. Gayle obtained a container of Comet and went back to the dayroom. Gayle threw the Comet on the other prisoner's face and body and picked up a broom and broke it in two. Gayle then hit the inmate several times on the head and body and arms. The other inmate ran away to wash the Comet from his eyes.

5.

As a result of the assault, the inmate was written up and a disciplinary hearing was held. The inmate pled not guilty, but during the hearing, admitted that he threw Comet in the inmate's face and hit the inmate with a broom. Inmate Desmond V. Gayle was found guilty and sentenced to spend 60 days in the Behavioral Adjustment Unit.

6.

During the time that the inmate was in the Behavioral Adjustment Unit, he made several complaints, including complaints about food loaf. Those complaints were evaluated by the medical department and treated appropriately.

7.

Inmate Gayle filed no grievance concerning the administration of food loaf during the time he was an inmate at the York County Prison.

8.

Inmate Gayle filed several other grievances, all of which were investigated and acted upon while he was confined in the York County Prison.

9.

All inmates are given a copy of the Prisoner's Handbook, or have access to one while incarcerated in the York County Prison.

10.

The Prisoner's Handbook clearly indicates that the grievance system "shall not be exhausted" within the meaning of state and federal law unless all reviews and appeals are timely taken and denied. (See Exhibit 1)

11.

I certify that the attached Exhibits are true copies of the designated documents.

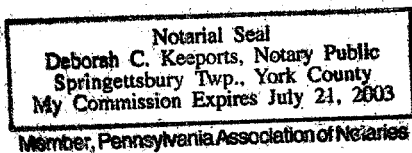
Denise L. Koller
Witness

Roger A. Thomas
Deputy Warden Roger Thomas

Sworn or affirmed to and subscribed
to before me, this 26th day of
March 2002

Deborah C. Keepert
Notary Public

MY COMMISSION EXPIRES:



IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

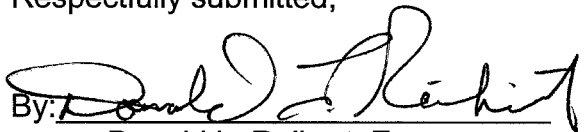
DESMOND V. GAYLE,	Plaintiff	:	3:CV-01-1282
		:	
v.		:	(Judge Caldwell)
		:	
WARDEN HOGAN AND DEPUTY BOWEN,		:	
Defendants		:	

CERTIFICATE OF SERVICE

I, Donald L. Reihart, Esquire, Assistant Solicitor for York County, hereby certify that a true and correct copy of the foregoing Affidavit of Deputy Warden Roger Thomas, was caused to be served on the date shown below by depositing same in the United States mail, first-class, postage prepaid thereon, addressed as follows:

Desmond V. Gayle, Inmate No. 62154
York County Prison
3400 Concord Road
York, PA 17402

Respectfully submitted,

By: 

Donald L. Reihart, Esq.
Sup. Ct. I.D. #07421
2600 Eastern Boulevard, Suite 204
York, PA 17402-2904
Telephone (717) 755-2799

Date: 3/25/02

Assistant Solicitor for York County

4-30-01

**INMATE HANDBOOK
FOR
YORK COUNTY PRISON
3400 CONCORD ROAD
YORK, PA 17402-9580**

The function of this institution is to detain prisoners who are awaiting trial and to keep inmates who are legally sentenced by a magistrate or the Court. This institution also detains individuals for the INS. In carrying out this function, every effort will be made to apply the principles of modern corrections. All inmates, irrespective of race, religion, or national origin, will be treated equally. All procedures within the institution will be consistent with the policies established by the York County Prison Board and the laws of the Commonwealth of Pennsylvania.

The primary purpose of this institution is to provide security for those who must be detained for the protection of society. Individuals are confined to this institution as punishment, not for punishment. Each person is treated as an individual. Our aim is to help the individual so he can return to the community as a law abiding citizen.

Read this handbook carefully. Know and comply with the rules and regulations. You are not serving your sentence properly unless you obey the rules of the prison willingly.

THOMAS H. HOGAN
WARDEN

EXHIBIT 1

10-28-01

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IMMIGRATION BUILDING COMPLEX

Dormitory Housing: In the event of a fire in either **Bravo Dorm** or **Charlie Dorm** follow the officers' instructions. You will be instructed to go down the stairs or directly to the main corridor where you will be directed into the opposite dormitory area or up the main corridor to safety in the gymnasium. If the general doors are not available you may be led to the emergency doors and into the yard area.

Custody Housing: In the event of a fire in **Delta Block** or **Echo Block** follow the officers' instructions. If it is necessary to evacuate the block, the inmates will be placed in the opposite block through either of the main access doors. If the opposite cell block can not be used, you will be moved to the gymnasium or the adjacent court yards or grass yards depending on the circumstances. Above all, **REMAIN CALM, QUIET, AND ORDERLY** so that your Block Officer may move you to a secure location.

GRIEVANCES/COMPLAINTS

The primary method of handling grievances within York County Prison is the Complaint Review System. The form that is used to express your Grievances/Complaints is called an 801. These forms are readily available from your Block or Dorm Officer or your Counselor. Before writing a complaint, please take every possible action to resolve the matter. First, bring the matter to the attention of your Block Officer. Very often, the Block Officer will be able to resolve your problem. If not, talk to the Shift Supervisor. If the problem is still not resolved, the primary method of handling grievances within York County Prison is the Complaint Review System. These forms are readily available from your Block Officers or Counselor. The 801 is used only as a last resort. Clearly state your complaint on the 801 and state the relief you are seeking.

When finished, the 801 can be given to any employee who will be responsible for ensuring that it will be given to the Deputy Warden of Treatment. The inmate may submit the 801 via a block officer, a supervisor, a counselor, a family member or the mail. Inmates may be disciplined for fraudulently filing grievances.

The integrity and credibility of the grievance system requires every grievance to be evaluated, investigated and fairly decided. Grievances filed only for fraudulent purposes deprive other legitimate complaints from timely determination. Any inmate who files a grievance that is found to be "fraudulent," after hearing by the disciplinary review officer pointed to determine guilt or innocence of disciplinary infractions, may be disciplined as follows:

1. Loss of all prison privileges.

2. Loss of good time accrued.
3. Confinement in the BAU up to 60 days.

Fraudulent means any grievance based upon allegations that are demonstrated beyond a reasonable doubt to be willfully dishonest and the product of a desire to abuse the grievance system or embarrass or humiliate an employee of the county or any other person or for any improper reason other than adjust a perceived legitimate complaint.

The Complaint Supervisor will receive the 801's each morning (excluding weekends and holidays). The inmate will normally receive a response within 10 working days. If the 801 requires investigation it may take longer.

If the inmate wishes to appeal the decision of the Complaint Supervisor, he may fill out an 804 appeal. These may be obtained by requesting the form from Complaint Supervisor. The Complaint Supervisor will write out the inmate's name and Complaint Register # on the form. Note: Any attempt to alter either the inmate's name or Complaint Register # automatically voids the appeal. The inmate must return the original and the pink copy to the Complaint Supervisor. All appeals to the Deputy Warden must be submitted within five (5) days of receipt of the response from the Complaint Supervisor. They will be turned into the Control Center and will be picked up every weekday morning.

The inmate will normally receive a response from one or both of the Deputy Wardens (805) within 10 working days from the receipt of the appeal, but it may be longer if an investigation is required.

If the inmate wishes to appeal the decision of the Deputy Warden, he may fill out an (806) "Request for Solicitor Review". The form can be obtained from the Deputy Warden and must be completed within three (3) days of receipt. Any attempt to alter either the inmate's name, complaint registration #, or the date of notice will automatically void the Request for Solicitor Review. The inmate must return the original and the pink copy. The forms are to be turned into the Control Center and the Deputy Warden will send the entire packet to the Solicitor for his review.

The Solicitor will review the 806 and prepare a response to the inmate. If the inmate is not satisfied he may appeal directly to the Prison Board by writing a letter which explains the reason for the appeal to the Chairman, Inspectors of York County Prison, 1 West Marketway, Fourth Floor, York, Pennsylvania 17401.

The Solicitor may refer the matter to the Complaint Review Board. Recommendations of the Complaint Review Board will be made to the York County Prison Board. If you are not satisfied with the decision of the Complaint

Review Board you may appeal directly to the York County Prison Board. Such appeal shall be in letter form, shall explain the reasons for the appeal, be addressed and mailed to Chairman, Inspectors of York County Prison, 1 West Marketway, Fourth Floor, York, Pennsylvania 17401.

The grievance system shall not be considered exhausted unless all reviews and appeals have been taken timely and denied.

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Each inmate may get a haircut the first week of every month (Mon. through Sat.). **SEE YOUR BLOCK OFFICER TO ARRANGE THE HAIRCUT.** All haircuts are given by inmate volunteer barbers and are **FREE OF CHARGE.** It is not permitted to give the barber any gifts or payment for haircuts.

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